

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE METHYL TERTIARY BUTYL ETHER
(MTBE) PRODUCTS LIABILITY LITIGATION**

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

This document relates to:

*Commonwealth of Puerto Rico, et al. v. Shell Oil Co.,
et al.*, No. 07-CV-10470

**DECLARATION OF WANDA GARCÍA HERNÁNDEZ
IN SUPPORT OF PLAINTIFF'S OPPOSITION TO CHEVRON PUERTO
RICO, LLC'S MOTION FOR SUMMARY JUDGMENT RE NO INJURY AT
TEXACO # 800**

I, Wanda García Hernández, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct.

1. I am the Acting Manager of the Water Quality Area of the Environmental Quality Board ("EQB") of the Commonwealth of Puerto Rico. The Acting Manager has been the highest position in the Water Quality Area since June 1, 2013. I have worked in several capacities for the EQB since 1985 and I have more than 25 years of experience regulating industrial and oil and gas companies in matters associated with leaking underground storage tanks and water quality and contamination. I am competent to make this declaration in support of the Commonwealth of Puerto Rico and Commonwealth of Puerto Rico by and through the EQB's Memorandum of Law in Opposition to Chevron Puerto Rico, LLC's Motion For Summary Judgment Re No Injury At Texaco # 800. I have personal knowledge of the facts and circumstances recited herein and if called upon to do so would testify to them.

2. The Texaco #800 site is located at Road 133, Km 0.8, Urb. Constancia, Ponce, Puerto Rico. The EQB has assigned UST number 89-1825 to the Texaco #800 Site.

3. Defendants incorrectly assert that the water underlying and in the vicinity of the Texaco #800 site is not Class SG-1 Groundwater.

4. At the time the Third Amended Complaint was filed, Class SG-1 groundwater was defined under the Puerto Rico Water Quality Standards Regulation as follows: “those ground waters which serve or have the potential to serve as [a] source of drinking water supply and agricultural uses including irrigation. Also included under this class are those groundwaters that flow into waters which support ecological communities of exceptional ecological value” Ex. A, Puerto Rico Water Quality Standards Regulation at p.23, Section 2.3.1.1, Ground Waters: Class SG1 (2003). Under the 2003 Regulation, Class SG-2 groundwaters were defined separately from Class SG-1 groundwater, and “[i]nclude[d] groundwaters which due to the high total dissolved solids concentration (concentrations greater than 10,000 mg/l) [were] not fit as [a] source of drinking water supply even after treatment.” *Id.* at 2.3.1.2.

5. The 2010 amendments to the Puerto Rico Water Quality Standards Regulations eliminated the distinction between Class SG-1 and Class SG-2 groundwaters. (A subsequent set of amendments to the Water Quality Standards Regulation in 2014 did not modify the relevant portions of the 2010 Regulation.) Ex. B, Puerto Rico Water Quality Standards Regulations at p.40, Section 1303.2(F)(1) (2010). Under the 2010 (and 2014) amendments, Class SG groundwater is defined as “all groundwaters as defined in this regulation.” Ex. B at p. 25, Section 1302.3, Ground Waters; Ex. C Puerto Rico Water Quality standards Regulation at p.26, Section 1302.3, Ground Waters (2014). The 2010 (and 2014) Puerto Rico Water Quality Standards Regulation defines groundwater as “sub-surface waters present at or beneath the water table, including waters in caves and caverns when the presence of water results from the manifestation of the characteristics of the saturated zone beneath the water table.” Ex. B at 11,

Section 1301.1, Definitions; Ex. C at p.11, Section 1301.1, Definitions. Class SG groundwater is further described in the amended regulation as “ground waters intended for use as [a] source of drinking water supply and agricultural uses including irrigation. Also, included under this class are those ground waters that flow into coastal, surface, and estuarine waters and wetlands as defined in this Regulation.” Ex. B at p.40, Section 1303.2(F)(1); Ex. C at p.43, 1303.2(F)(1).

6. Under both the historic Water Quality Standards Regulation and the 2010 and 2014 amendments to the Puerto Rico Water Quality Standard Regulation, the groundwater underlying the Texaco #800 site, including both the shallow aquifer and the deeper aquifer, is classified as SG-1 or SG.

7. The EQB utilizes the United States Geological Survey’s (USGS’s) descriptions and delineations of Puerto Rico aquifers as part of its assessment, definition and delineation of Puerto Rico Water Resources.

8. The Texaco #800 site is located above the South Coast Aquifer, as that Aquifer is delineated by the USGS.

9. According to the Groundwater-Quality Survey of the South Coast Aquifer of Puerto Rico, April 2 through May 30, 2007, prepared by the USGS in cooperation with the Puerto Rico Department of Natural and Environmental Resources, “[g]roundwater occurs primarily in Quaternary surficial [i.e., shallow] deposits that include fan delta and alluvial sediments. These deposits ... could be as much as 1,000 feet thick near the coast in areas to the west of the Río Jueyes [where the site is located] The surficial deposits between the Río Portugués at Ponce and the Río Coamo [where the site is located] are underlain by carbonate units of Tertiary age with permeable limestone units *that are hydraulically connected with the surficial deposits, thus both hydrogeologic units are considered as one aquifer unit in this*

area.” Ex. D, Groundwater-Quality Survey of the South Coast Aquifer of Puerto Rico, April 2 through May 30, 2007, “Hydrogeologic Setting” also found at <http://pubs.usgs.gov/sim/3092/>. (Emphasis added.) In other words, the shallow and deep saturated zones at the location of the Texaco #800 site are hydraulically connected and considered a single aquifer by USGS. Likewise, EQB considers the shallow and deep zones to be one aquifer. This means that the MTBE contamination in the shallow aquifer beneath the Texaco #800 service station is in the South Coast Aquifer and in Class SG (and SG-1) waters.

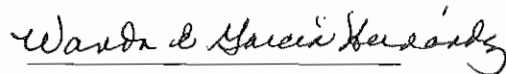
10. The portion of the South Coast Aquifer beneath the Texaco site and adjacent properties historically was, and currently is, a source of water supply to numerous current and former public and private drinking water and irrigation wells. For example, the following PRASA wells draw from the South Coast Aquifer in the vicinity of the site: Restaurada 7 Well; Restaurada P8 Well; Costa Caribe Well; Camino Del Sur Well; Febles 1 Well; and Santa Maria Well.

11. Although there are a number of wells that draw water from the South Coast Aquifer, including wells in the vicinity of Texaco #800, the classification of groundwaters as SG-1 or SG is not dependent on the existence or number of wells utilizing the groundwater. Rather, the classification is based upon the potential of groundwater for listed uses. According to both the pre-2010 Water Quality Standards Regulation and the current Regulation, “Designated Uses” “[r]efers to those uses specified in this Regulation for each water body or segment *whether or not these uses are being attained.*” Ex. A at p.6, “Designated Uses”; Ex. B at p.7, Section 1301.1, “Designated Uses” and Ex. C at p.11, Section 1301.1, “Designated Uses” (Emphasis added.). Accordingly, actual use of water is not determinative of the classification of the water. The water underlying and in the vicinity of the Texaco site was formerly classified as

SG-1 and is now classified as SG because it meets the criteria for such classification, including potential for use as drinking water and irrigation water.

12. Under the pre-2010 Regulation, Class SG-2 groundwaters “[i]nclude[d] groundwaters which due to the high total dissolved solids concentration (concentrations greater than 10,000 mg/l) [were] not fit as a source of drinking water supply even after treatment.” Ex. A at 23, Section 2.3.1.2 Class SG2. The total dissolved solids (“TDS”) levels reported by USGS in the area of the Texaco site are less than 1,000 mg/liter. Accordingly, such groundwater would have been Class SG-1, and not SG-2, under the former Puerto Rico Water Quality Standards Regulation. Such groundwater is also considered SG water under the current Puerto Rico Water Quality Standards Regulation today.

On this 4 day of ~~November~~, 2014, I declare under penalty of perjury under the laws of the United States that the above statements are true and correct and based on personal information and belief or upon review of available business records.



Wanda García Hernández
Acting Manager of the Water Quality Area of
the Environmental Quality Board

PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE

Commonwealth of Puerto Rico, et al. v. Shell Oil Co., et al., United States District Court,
Southern District of New York Case No. No. 07 Civ. 10470 (SAS)

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein
referred to, over the age of 18 years and not a party to this action. My business address is 1050
Fulton Avenue, Suite 100, Sacramento, CA 95825-4225.

On the date below, I served the following document on all counsel in this action
electronically through LexisNexis File & Serve:

**DECLARATION OF WANDA GARCIA HERNANDEZ IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO CHEVRON PUERTO RICO, LLC'S, MOTION FOR SUMMARY
JUDGMENT RE NO INJURY AT TEXACO # 800**

I declare under penalty of perjury under the laws of the United States of America and the
State of California that the foregoing is true and correct.

Executed on November 7, 2014, at Sacramento, California.



KATHY HERRON